

"TERMINAL STORAGE AND SERVICE AGREEMENT"

BETWEEN

MONSANTO COMPANY

AND

BASF CORPORATION

Effective: August 1, 1986

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Exhibit A - Material Safety Data Sheet

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## TERMINAL STORAGE AND SERVICE AGREEMENT

THIS AGREEMENT, made and entered into as of the 1st day of August, 1986, by and between MONSANTO COMPANY, a Delaware corporation having its ~~general~~ offices at 800 North Lindbergh Boulevard, St. Louis, Missouri 63167 ("Monsanto") and BASF CORPORATION, <sup>CHEMICALS DIVISION</sup> a Delaware corporation having its general offices at 100 Cherry Hill Road, Parsippany, New Jersey 07054 ("BASF").

## WITNESSETH

WHEREAS, BASF has need of and wishes to employ from Monsanto, at the latter's Seattle, Washington location ("Plant"), storage and terminal services for the receipt, storage, handling, transfer, and delivery of Platinol 711 ("Product"), and Monsanto wishes to provide such Services to BASF; and

WHEREAS, Monsanto represents that it understands the characteristics of the Product including all known potential health, safety and/or environmental problems associated with the receipt, storage, handling, transfer and delivery of said Product as set forth in Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the premises, the parties here intending to be legally bound hereby do mutually agree as follows:

1. STORAGE TANK PROVIDED BY MONSANTO TO BASF

<u>Tank Number</u>	<u>Tank Capacity</u>	<u>Tank Lining</u>	<u>Product</u>
6	16,000 gals.	None	Platinol 711

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2. FACILITIES. Monsanto shall provide and maintain for BASF's exclusive use during the term of this Agreement the storage tank listed in Section 1 hereof and all pumps, pipelines, tank connections and other equipment and related facilities (collectively "Facilities") necessary to provide the Services for the Product in a safe, clean and prompt manner. Monsanto represents that such storage tank, equipment and related facilities are of a size, capacity and construction suitable and safe to carry out the purposes of this Agreement. The said related facilities include but are not necessarily limited to:

(a) Adequate, convenient and free access roadways for use by BASF and any of its motor carriers and their vehicles and equipment between public roads and the truck loading racks at the Plant.

(b) Railroad tracks and appurtenant facilities for use by BASF and its rail carriers in discharging or loading Product at the Plant.

(c) Appropriate tank truck and tank car loading racks for the loading of Product.

(d) Pump to permit loading of Product into tank trucks at the rate of one hundred (100) gallons per minute minimum.

(e) Fire prevention and fire fighting facilities as required by federal, state, or local laws, ordinances and regulations.

(f) All utilities necessary to provide the Services contemplated herein.

3. SERVICES. Monsanto shall provide or arrange for all labor and services necessary and incidental to receive, store,

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protect, handle, transfer and deliver Product at the Plant via tank car and tank truck in a safe, clean and prompt manner ("Services"). Monsanto, its employees or agents shall undertake a visual inspection of all tank trucks prior to loading of Product. Monsanto shall reject any tank cars or tank trucks if there is doubt about their cleanliness or fitness to transport the Products in a safe and clean manner. Tank cars shall be supplied by BASF and transport truck carriers shall be nominated by BASF, but Monsanto shall arrange the loading schedule of such tank trucks.

4. TERM OF AGREEMENT. The term of this Agreement shall commence on August 1, 1986, and, unless sooner terminated as provided herein, shall continue for and shall automatically continue thereafter until terminated by either party giving at least ~~thirty (30)~~ days' written notice to the other party.

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5. PAYMENTS. BASF shall, within thirty (30) days after receipt of invoices for Services and Facilities provided hereunder, pay to Monsanto during the term of this Agreement, a storage and thru-put fee of \$0.38 per hundred weight based on the weight of tank trucks loaded.

6. HOURS OF OPERATION. Monsanto shall operate the Facilities and provide the Services specified herein five (5) days per week, Monday through Friday (except existing holidays), between the hours of 7:00 a.m. and 3:00 p.m. local time (herein called "Regular Hours"). In addition, upon request of BASF made at any reasonable time during Regular Hours, Monsanto shall provide loading-out services to BASF at times other than Regular Hours. BASF shall pay Monsanto for such services performed after Regular Hours at BASF's request and such overtime charges shall be based upon Monsanto's then current labor contract overtime charges.

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7. PRODUCT MEASUREMENT. The quantity of Product received, stored, handled, transferred and delivered to or by Monsanto under this Agreement shall be determined by weighing tank cars or trucks before and after loading or unloading of the Product. Tank cars and tank trucks shall be weighed on a certified public scale.

8. RECORDS AND REPORTS. Monsanto shall keep at all times complete and accurate records of the quantities of Product unloaded, transferred and remaining in said storage tank. Within <sup>FIVE</sup>~~Ten~~ (10) working days after the close of each calendar month, Monsanto shall furnish BASF a written report setting forth the dates and quantities of all Product delivered into or withdrawn from storage tank during the preceding calendar month, together with the quantities of Product held in the storage tank at the close of each such month. With respect to withdrawal of Product, Monsanto shall complete a serially numbered transfer report or bill of lading provided by BASF and shall maintain a log listing the date of withdrawal of Product, tank truck or tank car number(s), weight and/or volume loaded, carrier, releasing and receiving signatures. BASF, its employees or agents, may inspect the Facilities, all records and reports maintained by Monsanto relating to the Product, and make storage and flow measurements during Regular Hours and such other time as may be agreed to by Monsanto. Monsanto shall maintain and provide such additional reports as BASF may prescribe from time to time. *BASF SHALL BE NOTIFIED WITHIN ONE WORKING DAY OF ALL RECEIPTS AND SHIPMENTS BY MEANS MUTUALLY AGREEABLE.*

9. RESPONSIBILITY FOR LOSS OR DAMAGE TO PRODUCT.

(a) Monsanto's Responsibility. Monsanto shall have responsibility and liability for the care, custody and control of the Product from the time Product passes the flange connection between the delivering tank car's line and the Facilities' receiving line until Product passes the flange connection between the Facilities' delivery line and the receiving tank truck's

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connection. Monsanto shall observe, while the Product is in Monsanto's care, custody and control, proper practices and precautions to prevent discoloration, contamination, damage to or loss of the Product. Notwithstanding any of the foregoing, Monsanto shall not be liable for any loss or damage to Product however caused unless such loss or damage resulted from the failure by Monsanto to observe such practices and precautions in regard to them as are customary in the industry, and Monsanto is not liable for damages which could not have been avoided by observance of such practices and precautions.

(b) Incidental Losses. Monsanto shall not be liable for evaporation and incidental spillage losses to the extent that such losses are no greater than one quarter of one percent (0.25%) of Product received for BASF's account during the applicable Agreement term.

(c) Liability for Loss or Damage. ~~Subject to this Section 12(b),~~ <sup>T/C</sup> Monsanto shall be liable to BASF for all evaporation, discoloration, contamination, loss or damage to Product arising out of any failure of Monsanto to fulfill its obligations under this Agreement or out of the negligent act or omission of its agents, employees or representatives in connection with the receipt, storage, handling, transfer and delivery of the Product, or any services performed or to be performed hereunder. Monsanto shall not be responsible for chemical deterioration of Product due to the inherent nature (properties) of Product that such results would occur due to the stagnant storage of Product over a prolonged period of time. In the event Monsanto shall be liable or responsible to BASF ~~pursuant to this Section 12,~~ <sup>T/C</sup> Monsanto shall not be liable for special or consequential damages, but shall pay to BASF on demand, the market value of the Product discolored, contaminated, lost or damaged, ~~less any net salvage value for such Product credited Monsanto.~~ <sup>T/C</sup> ~~BASF shall make a reasonable effort under the then prevailing circumstances to sell~~ <sup>T/C</sup>

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~~any Product so discolored, contaminated or damaged at a fair and reasonable value, the net amount of which shall be credited to Monsanto against the market value owed BASF by Monsanto. If, however, BASF, after having made a reasonable effort to sell such Product under the then prevailing circumstances, determines that such Product does not have any significant value, BASF shall so~~  
~~notify Monsanto which shall promptly, safely and lawfully dispose~~  
of such Product at its own expense <sup>WRITTEN</sup> AFTER AUTHORIZATION IS RECEIVED BY MONSANTO FROM BASF. T/C

10. INDEMNIFICATION. Each party shall indemnify and hold harmless the other from and against any and all liabilities, claims, actions, fines, damages, losses, costs and expenses (including expense of defense settlement and reasonable attorneys' fees) arising out of injury to or death of any person, or damage to or loss or destruction of any property (including, without limitation, loss of use), or adverse effect on wildlife or the environment, caused by or arising out of or incidental to such party's performance or non-performance of its obligations hereunder or caused by the negligence, wrongful act or omission of such party, its employees or agents.

11. INSURANCE. Monsanto does not insure BASF's Product and property or property of others. Insurance, if desired by BASF or BASF's contractors, shall be carried by BASF or its contractors at their own expense.

12. TITLE AND LIENS. Title to all Product delivered by or for BASF to Monsanto, and any residue waste therefrom, shall remain at all times in BASF, and neither Monsanto nor any person claiming by, through or under Monsanto shall have or assert any right, title, lien or interest in or to Product. Monsanto shall store and ship Product as instructed by BASF free and clear of all liens or charges of any kind and character. If any lien or other claim on the Product arising as a result of the act of Monsanto remains unsatisfied after all payments are



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made, Monsanto shall refund to BASF on demand all monies that BASF may be compelled to pay in discharging such lien or claim, including, but not limited to, all judicial costs and reasonable attorney fees.

13. TAXES AND LICENSES. Monsanto shall pay all property, ad valorem and other taxes and charges relating to Facilities and Services provided hereunder directly to the appropriate taxing authority, and shall obtain at its expense and maintain all necessary federal, state or local licenses, permits and other required documentation for Monsanto's operations hereunder. BASF shall prepare all required tax returns and pay all property taxes on any Product owned by BASF throughout the Facilities and shall pay all such taxes legally assessed on Product directly to the taxing authority involved. In no event shall BASF be liable to Monsanto for any license, franchise or net income tax payable by Monsanto as a result of the existence of the Facilities or income derived therefrom.

14. FORCE MAJEURE. Neither party shall be liable to the other for, and each shall be excused from, any failure of or delay in performance under this Agreement to the extent caused by: any acts of God or the public enemy, war, riots, strikes, labor disturbances, sabotage, accidental fire or explosion, flood; lack of adequate fuel, power, raw materials, transportation facilities; compliance with governmental requests (U.S. or foreign), laws, regulations, orders or actions; accidents, or any other cause beyond the control and without the fault or neglect of such party.

15. CLEANING OF TANKS - DISPOSAL OF RESIDUE WASTE. If at any time during the term of this Agreement or any extension thereof it is necessary to clean a tank due to the change in Product to be stored or handled in the tank or when the use of a tank for the storage of Product is discontinued, either during

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the term of this Agreement or upon its termination, the cleaning of the tank and the disposal of residue waste therefrom shall be handled in the following manner:

BASF shall first give Monsanto disposition for the shipping of any saleable Product in the tank.

Monsanto shall then give BASF written notice of the proposed method of cleaning the tank and for the disposal of the residue waste and the estimated cost for such cleaning and disposal. The notice shall also identify the Entity or Entities (company, individual, etc.) proposed by Monsanto to conduct such cleaning and/or disposal and the site at which such residue waste shall be disposed. BASF shall be deemed to have approved such method of cleaning and disposal, Entity or Entities and the estimated costs unless within ten (10) days after receipt of such notice it disapproves in writing such method of cleaning and disposal, the Entity or Entities and the estimated costs. In the event that BASF disapproves such method of cleaning and disposal, the Entity or Entities and the estimated costs, the parties shall proceed as the parties shall mutually agree. In the event the parties cannot agree, BASF shall have the right to name the Entity or Entities to conduct such cleaning and disposal.

Monsanto shall then make the necessary arrangements for such cleaning and disposal and shall properly prepare all required forms, documents and paperwork.

BASF shall bear the cost of all such cleaning and disposal and shall, within thirty (30) days after receipt of a proper invoice from Monsanto, reimburse Monsanto for such costs.

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Monsanto shall dispose of residue waste only in the above described manner and shall not salvage, reclaim, reuse, sell or distribute such residue waste unless approved in writing by BASF.

16. ASSIGNMENT. Neither Monsanto nor BASF shall assign this Agreement in any manner, including by operation of law, without the other's consent in writing previously obtained, which consent shall not be unreasonably withheld, and any such purported or attempted assignment or subcharter without the non-assignment party's approval shall be void. Notwithstanding the preceding, however, Monsanto has the right to assign its rights, duties and obligations under this Agreement to any purchaser of substantially all its Seattle, Washington Plant.

17. INDEPENDENT CONTRACTOR. Monsanto is not and shall not act or purport to act as an agent or employee of BASF, but is and shall act as an independent contractor. BASF shall not exercise any control over or direction of the manner in which Monsanto performs the Services called for under this Agreement.

18. LABOR DISPUTES. Monsanto shall notify BASF immediately of any strike or labor dispute which may affect the Services to be furnished BASF hereunder. During such strike or labor dispute, Monsanto shall use its best efforts to continue the operation of the Facilities with Monsanto's regular terminal employees and/or managerial personnel, if permitted by labor contracts and if sufficient numbers of personnel to operate such Facilities are available.

19. GOVERNING LAW. The interpretation, construction and performance of this Agreement and the rights and remedies of the parties hereunder shall be governed by the laws of the State of Missouri.

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20. SEVERABILITY. If any provision of this Agreement should be construed or held to be void, invalid or unenforceable, by order, decree or judgment of a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect.

21. REGULATORY COMPLIANCE. It is the intent of the parties hereto that the Facilities and Services to be provided by Monsanto will not conflict with any law, regulation or ruling of an environmental nature of any federal, state, county, municipal or other governmental body. Monsanto agrees to provide suitable facilities for the storage and handling of the Product, and to comply fully in the performance of this Agreement with all governmental laws, regulations and rules.

22. SURVIVAL OF OBLIGATION. The rights, obligations and remedies accrued by the parties to the Agreement under these terms and conditions shall survive any modification, amendment, suspension or termination of the Agreement.

23. NOTICES. Notices required or permitted to be given the parties under this Agreement shall be in writing and shall be sufficiently given when delivered in person or when deposited in the United States Postal Service (registered or certified), postage prepaid to the following addresses, unless and until a different address shall have been specified by the applicable party:

If to BASF:

BASF CORP. - CHEM. DIV.  
100 CHERRY HILL RD.  
PARSIPPANY, NJ 07054

Attention: MANAGER, DISTRIBUTION OPERATIONS

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If to Monsanto:

MONSANTO COMPANY  
800 North Lindbergh Blvd.  
St. Louis, MO 63167

Attention: Manager, Storage Facilities and  
Tanker Operations

Routine operating instructions, requests, directions and notices dealing with the arrival of tank car(s) or tank truck(s) or notices dealing with the arrival of tank car(s) or tank truck(s) or gauging of Product and other similar communication, unless otherwise requested, may be given in such manner and to such persons as is customary or practicable.

24. SECTION HEADINGS. The section headings in this Agreement are inserted for convenience only and are in no way to be construed as part of this Agreement or as a limitation or enlargement of the scope or meaning of the particular sections to which they refer, and shall not affect the interpretation or any provisions of this Agreement.

25. MISCELLANEOUS. This Agreement constitutes the sole agreement between the parties hereto pertaining to the Facilities and Services to be provided by or on behalf of Monsanto hereunder and effective as of the date of this Agreement, supersedes and cancels any and all oral or written agreements or understanding between or assumed by the parties or either of them with respect to the subject of this Agreement, but without prejudice as to any liability which may have accumulated thereunder. No modification or amendment of this Agreement shall be effective unless submitted and agreed to in writing by the duly authorized representatives of the parties hereto. No modification or amendment of any provision of this Agreement shall be construed as a waiver, breach or cancellation of any other provision. No waiver by either party with respect to any breach or default or of any

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right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or any other right or remedy, unless such waiver be in writing and signed by the party to be bound.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

MONSANTO COMPANY  
("Monsanto")

By Lincoln S. Capstick

Typed Name Lincoln S. Capstick

Title Distribution Manager Plasticizers

Date 9/25/86

BASF CORPORATION  
("BASF")

By Thomas Y. Cook

Typed Name Thomas Y. Cook

Title Manager, Distr. Operations

Date 9/29/86

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